

WILMERHALE

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January 20, 2015

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Hon. George B. Daniels  
United States District Judge  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

**Re: *United States ex rel. Platz v. Bank of America Corp.*, No. 12-cv-08399**

Dear Judge Daniels:

I represent the Defendant, Bank of America Corporation, in the above-captioned matter. This letter is submitted on behalf of both Defendant Bank of America Corporation and Relator Jon Platz following a teleconference on January 14, 2015, among chambers, counsel for Defendant, and counsel for Relator. The purpose of the letter is to bring to the Court's attention and seek its approval of the parties' agreement that the Second Amended Complaint, filed on January 13, is the operative complaint in this case. A proposed order to that effect is attached hereto as Exhibit 1.

The original complaint in this qui tam False Claims Act case was filed under seal. Following the government's giving notice of its declining to intervene, the Court issued an order on November 15, 2012 unsealing the original complaint and authorizing its service (Dkt. 6). The original complaint was not served on Defendant because the Relator filed a First Amended Complaint and the Court ordered that the case be placed back under seal so that the Department of Justice would have an opportunity to investigate the allegations of the amended complaint. Following the government's giving notice of its declining to intervene as to the First Amended Complaint, the Court on January 6, 2015 issued an order unsealing the First Amended Complaint, authorizing service of the First Amended Complaint, and providing that "[u]pon the unsealing of the Amended Complaint, the seal shall be lifted as to all matters occurring in this action subsequent to the date of this Order" (Dkt. 14). As of the date of this letter, the First Amended Complaint has not been unsealed, i.e., it has not appeared on the public docket. A copy of the First Amended Complaint is attached hereto as Exhibit 2.

On January 13, 2015, Relator filed a Second Amended Complaint. Relator takes the position that he was entitled to file the Second Amended Complaint as of right because no pleading has yet been served on the Defendant. Defendant takes the position that leave of court or written consent from the Defendant was required for the filing of the Second Amended Complaint. Defendant is willing, however, to consent to the filing of the Second Amended Complaint and hereby gives that consent. The parties reserve all rights on the question whether

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leave of court or consent of the Defendant is required for any further amendment of the complaint.

Relator's counsel has stated that counsel for the government has reviewed the Second Amended Complaint and indicated that its decision to decline to intervene applies to the Second Amended Complaint as well as the First Amended Complaint.

In light of the foregoing, the parties jointly and respectfully request the issuance of an order entering the Second Amended Complaint as the operative complaint and authorizing its service.

Respectfully submitted,

/s/ Jonathan Cedarbaum

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